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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 181

WILLIAM L. CHESBROUGH AND MILDRED J. CHESBROUGH,

Petitioners,

vs.

THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY AND W. LEE SHIELD, SUPERINTENDENT OF INSURANCE OF THE STATE OF OHIO.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO AND BRIEF IN SUPPORT THEREOF.

SOL GOODMAN,
Counsel for Petitioners.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO AND BRIEF IN SUPPORT THEREOF.

MAY IT PLEASE THE COURT:

The petition of William L. Chesbrough and Mildred J. Chesbrough, Petitioners herein, for and on behalf of themselves and all other policyholders of the respondent corporation, respectfully shows to this Honorable Court:

A

Summary Statement of the Matters Involved

Petitioners, William L. Chesbrough and Mildred J. Chesbrough, were the holders of five (5) policies of insurance.

The insurance company is a stock life insurance company with total assets of $331,000,000.00, having a capital of $30,000,000.00 and a surplus of $22,500,000.00. Its policies of life insurance have been issued to approximately two and two-thirds million policyholders of which number two million are policies of a face value of less than $1,000.00.

The Legislature of Ohio enacted Sections 9364-1 et seq. of the General Code of Ohio, relating the process by which an Ohio stock life insurance company may acquire its outstanding stock and become a mutual company. These sections provided for a vote by policyholders insured in at least $1,000.00 and whose insurance has been in force at least one year. A majority vote of such class to determine the question of mutualization as well as the control of the mutualized company after mutualization.

A plan of mutualization has been proposed whereby the stockholders of the corporation are paid $42,000,000.00 for their stock and the corporation becomes a mutual life insurance company. Notice of the meeting to vote on the plan was sent to all policyholders having voting rights, as defined by the statute which, in this case, constituted 14% of the policyholders and a majority of them have approved the plan and adopted a code of regulations. This change from a stock company to a mutual company was carried out, as permitted by the Ohio Statutes, upon a vote of a majority of 14% of the policyholders, and a code of regulations regulating the affairs of the company provide for its management in the future by a majority of this 14% group.

B

Reasons Relied Upon for the Allowance of the Writ

1. The decision of the Supreme Court of Ohio, affirming the decision of the Court of Appeals of Ohio, decided a federal question of substance not theretofore determined

by this Court and has decided it in a way probably not in accord with applicable decisions of this Court.

2. The decision of the state court is in violation of the rights of petitioners and the class of policyholders they represent, as guaranteed under Article (1), Section 19, and Article (2), Section 28, of the Constitution of the State of Ohio, and Section 10, Article (1), and Section 1, of the 14th Amendment to the Constitution of the United States of America.

3. The decision of the state courts involved a construction of Sections 9364-1 and 9264-8 of the General Code of Ohio and the construction placed on said sections of the Code, in their application to the facts herein, result in the impairment of the obligation of the contract between the policyholders and the company and amounts to the taking of property without due process of law, in violation of the constitutional provisions above mentioned.

4. Unless a decision is made by this Honorable Court upon the state of facts existing in the present cause, the petitioners and some two million other policyholders of respondent corporation will be deprived of their rights and assets in the corporation and will have their policies and contracts impaired by the depletion of reserves and the taking out of $42,000,000.00 of corporate funds by the stockholders.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Ohio commanding that Court to certify and to send to this Court for its review and determination, on a day therein named, and a full and complete transcript of the record and all proceedings in case numbered and entitled on its docket No. 31386, William L. Chesbrough and Mildred J. Ches-

brough, plaintiffs-appellants, vs. The Western and Southern Life Insurance Company and W. Lee Shield, Superintendent of Insurance of the State of Ohio, defendants-appellees, and that the said judgment of the Supreme Court of Ohio, entered by it on April 29, 1948, wherein it refused a motion to certify the record to the Court for review and dismissed the petition, may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

WILLIAM L. CHESBROUGH and
MILDRED J. CHESBROUGH,
Petitioners.

SOL GOODMAN,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

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Respondents

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

The Opinions of the Courts Below

The opinion of the Supreme Court of Ohio is reported in *149 O. S. 578.* The opinion of the Court of Appeals for the Second Appellate Judicial District was rendered January 23, 1948, and is reported *51 O. L. Abstract 320.* A copy is set forth at page 25 *ante.* The opinion of the Common Please Court was rendered on January 1, 1947 and is not reported. A copy is set forth at page 26 *ante.*

II

Jurisdiction

1. The jurisdiction of this Court to entertain a petition for a writ of certiorari and the allowance thereof is provided for in Judicial Code, Section 237, as amended by the Act of February 13, 1925, 43 Statutes 937, particularly Section 237 (a) (b).

2. The date of the judgment and decree to be reviewed is April 28, 1948, at which time the Supreme Court of Ohio rendered its decision in cause No. 31386, wherein it decided that petitioners' appeal be dismissed for the reason that no debatable constitutional question is involved.

3. The ruling of the lower court affirmed by the Court of Appeals and the Supreme Court of Ohio has, in effect, held that the defendant may pay out $42,000,000.00 to its stockholders to acquire all of the stock and become a company owned by the policyholders by the vote of a very small number of the policyholders in favor of such action and that, thereafter, the control, management and operation of the company can be carried on by the vote of a small number (a little over 7%) of the policyholders. The decisions of the Ohio courts, in this case, are in direct violation of the guarantys contained in Article 1, Section 19, and Article 2, Section 28, of the Ohio Constitution, and Section 10, Article 1, and Section 1, of the 14th Amendment to the Constitution of the United States of America.

There are no decisions by this Court covering a similar state of facts. However, the decision of this Court, in the case of *Massachusetts* v. *Mellon*, 262 U. S. 447, and *Stark, et al.* v. *Wickard, Secretary of Agriculture*, 321 U. S. 288, seem applicable, but the Ohio courts did not follow their reasoning or holding.

4. The jurisdiction of this Court is sustained by Rule 38, Section 5(a). See, also *Matthews* v. *Huwe*, 269 U. S. 262; *Cuyahoga River Co.* v. *Northern Realty Co.*, 244 U. S. 300; *Eau Claire National Bank* v. *Jackman*, 204 U. S. 522.

III

Statement of the Case

In this case approximately 2,600,000 individuals purchased contracts of life insurance with the respondent company. The Legislature of Ohio enacted legislation consisting of G.C.O. 9364-1 and 9364-8, providing that a stock life insurance company could convert into a mutual life insurance company, upon majority vote of policyholders having policies over one year old and over $1,000.00 face value. The mutualized company is to be controlled and carried on by majority vote of the same described policyholders. The Legislature apparently overlooked respondent company which has engaged in the sale of small policies of insurance, so that 86% of its policies failed to qualify for voting rights under this statute, thus, leaving the vote on the question of conversion, as well as the vote on the future management and operation of the company, in the hands of a majority of the remaining 14%. Under this legislation sustained by the Ohio courts, out of 100% of policyholders in a converted company, the question of conversion and future management of the company will depend upon a vote of a little over 7%.

IV

Specification of Errors

1. The Ohio courts committed error in finding and holding that the statutes in question were constitutional and that their operation as applied to the state of facts existing

in the instant case did not interfere with the constitutional rights of petitioners.

2. The Ohio courts committed error in holding that the rights and properties of petitioners and the other policyholders could be taken away under and by reason of G.C.O. 9364-1 and 9364-8.

3. The Ohio courts committed error in failing and refusing to declare the rights of petitioners to be such that the respondent company could not be converted from a stock life insurance company to a mutual life insurance company, except upon vote by a majority of its policyholders and the management of the mutual life insurance company after conversion put in the hands of a majority of the policyholders.

V

Argument

A mutual life insurance company has been defined as one which has no capital stock and whose policyholders constitute its members, who, in turn, elect its board of directors, through whom its business is conducted. *Atlantic Life Insurance Company* v. *Mancure*, 35 Federal (2nd) 360. Another judicial statement says that a mutual insurance company is simply a company whose funds for the payment of losses consist not of capital subscribed or furnished by outside parties, but of premiums mutually contributed by the parties insured. *Mygatt* v. *New York Protection Insurance Company*, 21 New York 52. *Muller* v. *State Life Insurance Company*, 27 Indiana Appeals 45. In the case of *Equitable Life Assurance Society of the United States* v. *Bowers*, 87 Federal (2d) 687, it was stated that an insurance company is mutual when there is no group but policyholders who have an interest in it or power over it. We see, therefore, that a mutual insurance company is one

entirely devoid of stockholders and the funds contributed by them as capital. In place of stockholders each policyholder is a member of the corporation and they elect the board of directors through whom the corporate business is conducted. No person, or group of persons, other than the policyholders has any interest or responsibility in connection with the corporation.

Accordingly, therefore, upon the conversion of a stock company to a mutual company all of the funds making up the corporation's capitalization, together with so much of the funds of the surplus account as may be determined upon, are withdrawn from the corporation and paid to the stockholders for their stock. Thereupon all of the policyholders become members of the corporation and responsible for the future conduct of the affairs of the corporation through directors elected by them. In other words, the insured become the insurer.

That mutualization would affect policyholders of a life insurance company and their rights, status and legal relations was clearly recognized by the legislature when it made mutualization contingent upon the approval of the policyholders. G. C. Section 9364-1 provides that a domestic stock life insurance corporation may become a mutual life insurance corporation and to that end may carry out a plan for the acquisition of shares of its capital stock provided that such a plan "(1) shall have been adopted by a vote of a majority of the directors of such corporation; (2) shall have been approved by a vote of stockholders representing a majority of the capital stock then outstanding at a meeting of stockholders called for the purpose; (3) *shall have been approved by a majority of the policyholders voting at a meeting, called for the purpose, of policyholders each insured in at least one thousand dollars and whose insurance shall then be in force and shall have been in force for at least one year prior to such meeting;* • • •

(4) shall have been submitted to the superintendent of insurance and shall have been approved by him in writing;" (Emphasis added).

Following the above provision that such plan of mutualization shall be approved by a majority of the policyholders voting at a meeting called for that purpose the legislature has gone to great lengths in said code section to provide in detail just who shall be considered a "policyholder," what shall constitute insurance in the amount of $1,000.00 or more, the method of calling such meeting, the manner of voting, the type of ballot to be used, the procedure of said meeting, the appointment of inspectors, the verification of ballots, the determination of the qualifications of the voters, the counting of the votes and the payment of the expense of said meeting. Obviously the legislature was aware that some policyholders' rights, status and other legal relations would be vitally affected by mutualization else it would not have provided that mutualization could not be accomplished without their consent and approval, nor would the legislature have taken such pains to provide in detail the exact manner in which such consent and approval should be obtained. On the contrary, if the policyholders had no rights of any nature which would be affected by mutualization then the act would be invalid for making mutualization subject to the consent and approval of a totally disinterested group of persons having no connection whatsoever with the conversion.

The court below states that the plaintiffs may not invoke the jurisdiction of the courts for the reason that no actual controversy exists and plaintiffs have not sustained or are in imminent danger of sustaining any direct injury. In support of this finding two United States Supreme Court cases have been cited both of which are readily distinguishable from the case at bar. In the case of *Massachusetts* v. *Mellon*, 262 U. S. 447, the first case cited, the State of Massachusetts sought to enjoin an appropriation for the so-called

Maternity Act, which, after the first year, was to be apportioned among such of the several States as should accept and comply with its provisions, for the purpose of reducing maternal and infant mortality and protecting the health of mothers and infants. The State of Massachusetts had not even accepted the option extended by the Federal Government but that State claimed that, although it had not accepted the act, its constitutional rights were infringed by the imposition upon the State of an unconstitutional obligation. The court, at page 480 of its opinion stated:

> "Probably it would be sufficient to point out that the powers of the state are not invaded, since the statute imposes no obligation but simply extends an option which the state is free to accept or reject."

And, at page 483 of the opinion the Court states:

> "In the last analysis the complaint of the complainant State is brought to the naked contention that Congress has usurped the reserved powers of the several states by the mere enactment of the statute, although nothing has been done and nothing is to be done without their consent; and it is plain that the question, as it is thus presented, is political, and not judicial in character, and therefore is not a matter which admits of the exercise of the judicial power."

In the first place it is to be noted that this was an action for injunctive relief, and not for a declaratory judgment. Certainly it cannot be claimed that all of the elements necessary for injunctive relief must be present in order to maintain an action for declaratory judgment. If such were the case, the passage of the Uniform Declaratory Judgment Act would have been a vain and useless gesture. In the second place enactment of the statute did not in any way affect the plaintiff State's rights and could not affect them in any way unless the state gave its express consent. Ob-

viously, the question presented was moot because there was no action pending or contemplated which could affect the state in any way, shape or form.

In the case of *Stark, et al.*, v. *Wickard, Secretary of Agriculture*, 321 U. S. 288, which is relied upon by the court below, the relief sought was not to declare a statute unconstitutional but to compel proper execution of the Agricultural Adjustment Act by enjoining the Secretary of Agriculture from enforcing an order allegedly illegal under the act. The action was purely and simply in equity only, and grew out of an order of the Secretary of Agriculture reducing the minimum prices to be paid by milk handlers to milk producers on milk sold in certain areas. The order was directed to milk handlers only and, of course, did not affect any milk producer unless he chose to sell to milk handlers within the given area. The Supreme Court held that even though a milk producer had the option of whether or not he would sell within the area would not deprive the milk producer of the right to challenge an illegal order if he should choose to sell within the area; and held further that such milk producer would have an interest not possessed by the people generally as would enable him to bring the suit in equity. Syllabus 8 of this case reads as follows:

> "Where a complainant has an interest personal to himself and not possessed by the people generally in the enforcement of laws, such interest may be adjudicated by the courts under their general powers."

We see, therefore, that the above case was one in equity for an injunction; that no constitutional question was raised, and that the relief sought was the enforcement of a valid law. However, even though the case was in equity for injunctive relief the court held that where the complainant has an interest not possessed by the people generally, such interest may be adjudicated by the Courts under their

general powers. Certainly it cannot be contended that the policyholders of the defendant company do not have interests which are not possessed by the people generally, and that their rights are no more affected by the mutualization than persons who are not policyholders of the company.

Thirteen states have enacted mutualization statutes which permit stock companies to convert to mutual companies. In every single instance mutualization is contingent upon the approval of the policyholders. All of the legislatures, without exception, have thus recognized the paramount right of the policyholders to have an opportunity to give their consent to becoming members of a mutual company and the right to vote after mutualization.

The plaintiffs desire to direct the Court's attention to the extent to which the States of New Jersey and Oregon have gone not only in recognizing the policyholders' rights to vote for or against a plan of mutualization but also to insure that those rights will be fully and adequately safeguarded. Chapter 17: 33-46 of the New Jersey Statutes provides that before mutualization can take place a petition must be filed with the Chancery Court and thereupon the Court appoints counsel to represent the policyholders in the action where full inquiry is made into the fairness and propriety of the plan. After the Court renders its decision any policyholder can appeal to higher courts. This provision is in addition to the right of every policyholder over twenty-one years of age, whose insurance had been in effect for a year, to vote for or against the mutualization.* The Oregon statute, after providing that the question of mutualization must be submitted to the policyholders, further

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* The Prudential Insurance Company, a New Jersey corporation, the second largest insurance company in the world mutualized under the New Jersey Statute which imposes no limitation on voting rights on the basis of amount of insurance held. (132 New Jersey, 170).

provides that if the plan of mutualization is rejected by the policyholders no further action towards mutualization can be taken for at least five years. Section 101-603, Vol. 7, Oregon Code reads as follows:

> "Prerequisites to Acceptance. Any such corporation hereinafter formed may carry out a plan for the acquisition of the shares of its capital stock for the purposes aforesaid; provided, however that such plan shall have been adopted and approved as herein set forth, to-wit * * * (d) such plan shall have been approved by a majority vote of the policyholders of such corporation, whose insurance shall then be in force, voting at a meeting."

Section 101-607, Volume 7, Oregon Code reads as follows:

> "Effect of Rejection of Proposal By Policyholders. In the event a majority of the policyholders of such corporation, whose insurance shall be in force, shall be for the rejection of such change, then, and in that event, such corporation shall continue as originally organized and no further vote or action shall be taken to effectuate such changes for a period of five years from the date of certificate of the Judges so declaring said vote."

Surely, the legislatures of Oregon and New Jersey would not have enacted such provisions into their mutualization statutes if the policyholders had no rights which would be affected by mutualization.

Mutualization under the plan in this case permits the withdrawal of capital and surplus by the stockholders and provides for the cancellation of all outstanding stock. When this is done the stockholders have no further legal interest in the company. The only other interested group is the policyholders. In other words the plan results in a sale of the company by the stockholders to the policyholders and the future destiny of the company is their sole concern. Can they be denied the right to question the desirability

of a sale to them or to challenge the constitutionality of enabling legislation? Are they to be denied the right to question procedures for the adoption of amended articles and regulations governing the mutualized company, incorporated in the plan?

In view of the above it is submitted that the operation of the mutualization statute clearly affects the rights, status, and other legal relations of the plaintiffs and other policyholders and that the Court below erred in finding that they have no right to maintain this action under the Uniform Declaratory Judgments Act.

It is the contention of the appellants that G. C. Sections 9364-1 and G. C. 9364-8 are invalid and unconstitutional in that they are discriminatory and deny appellants and other policyholders equal protection of the laws. It must be remembered that no person or group of persons, other than the policyholders, has any interest or responsibility in the mutualized corporation.

G. C. Section 9364-1 provides that the only policyholders who shall be entitled to vote on the approval or disapproval of a plan of mutualization shall be those policyholders who are insured in an amount of at least $1,000.00 and whose insurance shall at the time the vote is taken have been in force for at least one year. Let us examine the effect of this provision in the light of the admitted facts in the instant case. Out of a total of approximately 2,670,000 policyholders of the defendant corporation 2,000,000 policyholders, or seventy-five per cent of the total number of policyholders of the corporation were denied the right of vote for the approval or disapproval of the plan of mutualization. Of the total number of policies which the defendant corporation had outstanding eighty-six per cent, or 3,130,-007 policies, were for amounts of less than $1,000.00 and only fourteen per cent, or 553,267 policies, were for amounts

of $1,000.00 or more; that of the total premiums received by the defendant corporation on policies in effect on January 30th, 1946, and still in effect on January 30th, 1947, and hence eligible to vote notwithstanding the one year limitation, fifty-eight per cent of such premiums were paid by policyholders who were denied the right to vote by reason of the $1,000.00 limitation; that the policyholders who were denied the right to vote held more than fifty percent of the total insurance which the defendant company then had in force and effect. The policyholders who under the terms of the plan and the mutualization act must become members of the company are bound by its future fortunes whatever they may be despite the fact that they were not only denied the right to express approval or disapproval of the plan but were also denied the right even to be apprised of the fact that the company was planning to mutualize and excluded from any opportunity whatsoever to see or examine the plan or in any other way to know anything about it.

What is of the utmost importance and the thing that affects these plaintiffs and every other policyholder of the company is that the vast majority of the policyholders, whose vote would be decisive on any question the subject of a policyholders' meeting, are denied the right to vote.

The Court below attempts to answer this complaint by stating that one of the named plaintiffs is already entitled to vote and the other will soon be accorded the right.

Section 9364-8 provides that all policyholders shall be members of the corporation but that the only policyholders who shall have the right to vote, or any voice in the business of the corporation, shall be those insured in an amount of at least $1,000.00 whose insurance shall have been in force for at least one year. The effect of this is to deprive seventy-five percent (75%) of the members holding eighty-

six per cent (86%) of the policies, having a total face value of more than fifty per cent (50%) of the insurance in force and paying fifty-eight per cent (58%) of the total premium income of the company, of any voice whatsoever in the manner in which the corporation business is conducted, even though the same might be conducted in a manner extremely detrimental to their interests and the interests of the corporation. By the same token, twenty-five per cent (25%) of the members holding fourteen per cent (14%) of the policies, having a face value of less than fifty per cent of the insurance in force and paying only forty-two per cent (42%) of the total premiums, are invested with the power to control the company in perpetuity. Under this state of affairs the small minority group has the power to amend the articles of incorporation, and corporate code of regulations, and to elect the directors, to the total exclusion of the members who have the overwhelmingly greater interest in the company and its well being. As stated above in a mutual company the funds for payment of losses consist not of capital subscribed or furnished by outside parties but of premiums mutually contributed by the parties insured. So in the instant case fifty-eight per cent (58%) of the premiums making up the fund from which losses on future policies are paid will be contributed to the company by seventy-five per cent (75%) of the members who, under the statute and plan, will be deprived of the right to utter one single word with respect to the manner in which the business of the company is conducted, including the payment of dividends, if any, even though the business might be conducted in a manner detrimental to their interests.

It is a general and unanimously accepted rule that any statute may be unconstitutional in its operative effect even though constitutional on its face.

This rule of law was announced in the case of *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, where the Court stated in its opinion:

> "A statute may be invalid as applied to one set of facts, and yet valid as applied to another."

The same rule was also recognized in the case of *Castle* v. *Mason*, 91 O. S. p. 296, where Syllabus 1 states:

> "The constitutionality of a law may be determined by its operative effect, although on its face it may be apparently valid."

And at page 303 of the opinion it is stated:

> "A law may be within the pale of constitutional authority when originally passed, yet because of its future operations it may directly contravene the organic law.
>
> "As stated by Mr. Justice Harlan, in Minnesota v. Barber, 136 U. S., 313, 319, 'There may be no purpose upon the part of the legislature to violate the provisions of that instrument, and yet a statute enacted by it, under the form of law, may, by its necessary operation be destructive of rights granted or secured by the constitution. In such cases, the courts must sustain the supreme law of the land by declaring the statute unconstitutional and void.' To the same effect are Brimmer v. Rebman, 138 U. S. 78 and Poindexter v. Greenhow, Treas., 114 U. S. 270."

American social, political and economic philosophy has been based upon general principles of equality since the beginning of American government. The guaranty of equality is to be found in the clause in the Fourteenth Amendment to the Federal Constitution which provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Cases too innumerable to cite have enunciated the meaning of the phrase "equal protection of the laws," and the protection afforded by it

against discriminatory legislation. In 12 American Jurisprudence, page 129, is the statement supported by a great many decisions of the United States Supreme Court that:

> "The guiding principle most often stated by the Courts is that this constitutional guaranty requires that all persons shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

It is common knowledge that a classification must have some relation to the privilege enjoyed and must be founded upon pertinent and real differences as distinguished from irrelevant and artificial ones. The test of generality of a law is that it should embrace all and exclude none whose conditions and wants render such legislation equally appropriate to them as a class. *Wauser* v. *Hoss,* 38 Atl. 449. One of the leading cases on the subject of classification is *Southern Railway Company* v. *Green,* 216 U. S. 400, wherein it is stated at page 417:

> "While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrary made without any substantial basis. Arbitrary selection, it has been said cannot be justified by calling it classification."

In the case of *Gulf, Colorado and Santa Fe Railroad Co.* v. *Ellis,* 165 U. S. 150, Justice Brewer states;

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the 14th Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground, some difference which bears a just

and proper relation to the attempted classification and is not a mere arbitrary selection."

The above language was quoted and approved in 170 U. S. 294.

In 12 American Jurisprudence, page 144, it is stated:

"A fundamental principle involved in classification is that it must meet the requirement that a law should affect alike all persons in the same class and under similar conditions."

And, at page 176 it is stated:

"In order for a classification to meet the requirements of constitutionality it must include or embrace all persons who naturally belong to the class."

In 12 American Jurisprudence, page 140 it is stated:

"Class legislation discriminating against some and favoring others is what is prohibited by the equal protection clause of the 14th Amendment to the Constitution."

And, at 12 American Jurisprudence, page 150, it stated:

"The rule is well settled that arbitrary selection can never be justified by calling it classification. This is forbidden by the equal protection demanded by the 14th Amendment."

And, at page 151, it is stated:

"The general rule is well settled by unanimity of the authorities that a classification to be valid must rest upon material differences between the persons included in it and those excluded, and, furthermore, must be based upon substantial distinctions. As the rule has sometimes been stated, the classification, in order to avoid the constitutional prohibition must be founded upon pertinent and real differences, as distinguished from irrelevant and artificial ones."

It is the contention of the petitioners that the classification made by the legislature in the instant case in both G. C. 9364-1 and G. C. 9364-8, wherein policyholders insured in an amount of less than $1,000.00 are deprived of the right to know of or vote upon a plan of mutualization and are denied the right to participate in any manner in the affairs of the company even though they are members thereof, is an arbitrary and unreasonable classification and not one resting upon material differences between the persons included in the class and those excluded from the class and is not one based upon any substantial distinctions.

If the company had issued no policies of $1,000.00 or more to any person, not a single policy holder would be entitled to vote. Would the statute be upheld under these circumstances? We submit it is no more unreasonable to exclude all policyholders than it is to deny eighty-six per cent (86%).

The petition herein should be granted and reviewed by this court on authority of *Connecticut Mutual Life Insurance* v. *Moore*, 92 Supreme Court L. Ed. 647:

> "Consequently a case or controversy arising from a statute interpreted by the state court is here with precise federal constitutional questions as to policies issued for delivery in New York upon the lives of persons then resident therein where the insured continues to be a resident and the beneficiary is a resident at the maturity of the policy. A judgment on that class of policies should be reviewed by this Court. *Nashville, C. & St. L. R. Co.* v. *Wallace*, 288 U. S. 249, 259, 77 L ed 730, 733, 53 S Ct 345, 87 ALR 1191; *Nashville, C. & St. L. R. Co.* v. *Walters*, 294 U. S. 405, 79 L ed 949, 55 S Ct 486. See *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 459-463, 89 L ed 1725, 1733-1736, 65 S Ct 1384.

Summary of the Argument

The legislature authorized mutualization only upon approval by a majority of the policyholders. Does such authorization apply, in the instant case, where the qualification of policy holders to vote on mutualization eliminates 86% of the class? It must be evident that the legislature did not have such situations in mind, and if it did consider such situations, the application of the rule to this company is certainly contrary to every constitutional provision providing for equal treatment.

The respondents recognize the weakness inherent in this legislation when applied to the existing state of facts. The insurance company contends that after mutualization, all policy holders are entitled to vote. It contends that the statute provides for just what the petitioners contend it should provide. Section 9364-1, providing for a vote for mutualization, and Section 9364-8, providing for a vote after mutualization, use the same language in defining the class of policy holders eligible to vote as "policy holders insured in at least $1,000 * * * and whose insurance * * * has been in force for at least one year". The insurance company now contends that the language in the first section limits the qualification to vote to policies of $1,000, one year or more old, while the provision in Section 9364-8, using the same language, means that all policy holders, no matter what amount or of what age, may vote. No matter how hard one tries to stretch his imagination, such a construction is simply impossible. The fact that the insurance company did not so construe it is evident when, in its plan for mutualization, as well as in its action after mutualization, by adoption of a code of regulations, preparation of proxies, holding of the meeting and all other steps, it limited such action to policies of more than $1,000 and to an age of more than one year. Of course, if the Act, in Section 9364-8,

does require that all policy holders be given the right to vote, then this Court should grant petitioners relief, because the admitted facts are that notices were sent only to 14% of its policy holders and only that small percentage participated in the voting.

We respectfully submit that petitioners in this case, as holders of policies both over and under $1,000 and policies which are over and under one year old, are representatives of the entire class of policy holders and appear in this case as such representatives and *should be heard to voice the objection of the over two million policy holders in this company who have been deprived of an opportunity of either voting for mutualization or of voting for the adoption of a code of regulations to be effective after mutualization;* the judgment of the lower court should be reversed and, upon the agreed statement of facts, the petitioners should be awarded the relief prayed for.

Conclusion

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that, (a) an important question of general law having been decided in a way probably untenable and in conflict with the weight of authorities; and (b) an important question of Federal law which has not been, but should be, settled by this Court; and (c) the State Court having decided a Federal question in a way probably in conflict with applicable decisions of this Court; it may be properly reviewed and that to such an end a writ of cer-

tiorari should be granted and this Court should review the decision of the Supreme Court of Ohio and finally reverse it.

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APPENDIX "A"

COURT OF APPEALS

No. 4071

WILLIAM L. CHESBROUGH, and MILDRED J. CHESBROUGH, *Plaintiffs-Appellants,*

vs.

THE WESTERN & SOUTHERN LIFE INSURANCE CO., and W. LEE SHIELD, Superintendent of Insurance, of the State of Ohio, *Defendants-Appellees*

Opinion

(Rendered on the 23rd day of January, 1948)

BY THE COURT:

This is a law appeal from the Court of Common Pleas of Franklin County, Ohio. The action was one for a declaratory judgment seeking to be declared as invalid and unconstitutional Sections 9364-1 and 9364-8 of the General Code of Ohio. The trial Court, in a lengthy and well considered opinion, after setting forth the facts admitted by the pleadings, found that these facts were not sufficient to entitle the plaintiffs to invoke the jurisdiction of the Common Pleas Court to determine the constitutionality of these statutes. However, in view of the importance of the questions raised, it deemed it proper to consider the claims of the plaintiffs as to the unconstitutionality of the aforesaid sections, and after so doing it declared them to be constitutional. The assignments of error are all directed to these rulings by the trial Court. For this Court to write an extended opinion would serve no good purpose as we find the authorities for the rulings are fully set forth in the opinion of Judge Gessaman, which we adopt in its entirety as that of our own.

We find no error in the record and the judgment is affirmed.

Wiseman, P. J., Miller and Hornbeck, JJ., concur.

APPEARANCES:

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Hon. Hugh S. Jenkins, Attorney General; Hon. Ralph H. Klapp, Asst. Attorney General, State House Annex, Columbus 15, Ohio, *Attorneys for Defendant-Appellee,* Superintendent of Insurance of the State of Ohio.

APPENDIX "B"

COURT OF COMMON PLEAS

No. 171,787

WILLIAM L. CHESBROUGH, annd MILDRED J. CHESBROUGH, *Plaintiffs,*

vs.

THE WESTERN & SOUTHERN LIFE INSURANCE CO., and W. LEE SHIELD, Superintendent of Insurance, of the State of Ohio, *Defendants*

Decision

(Rendered on the 1st day of July, 1947)

GESSAMAN, *J.:*

This is an action for a declaratory judgment, presented to the Court upon the fourth amended petition and the separate answers of the defendants. Plaintiffs allege that

they bring the action upon their own behalf as policyholders of defendant company and on behalf of the company and all policyholders. The issues will be understood by a brief review of the fourth amended petition (hereinafter referred to as the "petition").

Plaintiff, William L. Chesbrough, alleges that he purchased a policy of life insurance from the defendant company on February 2, 1942, in the amount of $500.00 and one on July 16, 1946 in the amount of $5325.00.

Plaintiff, Mildred J. Chesbrough alleges that she purchased a policy of life insurance from the defendant company on December 22, 1941, in the amount of $500.00; one on December 13, 1943, in the amount of $284.00 and one on February 1, 1944, in the amount of $1000.00.

Plaintiffs further allege that on October 8, 1946, the directors of defendant company adopted a plan of mutualization whereby defendant company would be converted from a domestic stock life insurance company to a mutual life insurance company without capital stock; that by this plan defendant company would acquire all of its outstanding stock ($30,000,000.00) in exchange for United States bonds of the par value of $39,960,000.00; that each policyholder shall become a member of the corporation; that said plan was approved by the stockholders of the company on October 8, 1946; that a meeting of those policyholders specified in Sec. 9364-1, G. C., was held on January 30, 1947, and that, by vote held in the manner specified in said section the plan was approved; that said plan will be submitted to the Superintendent of Insurance for his approval or disapproval.

Plaintiffs further allege that 86% of the outstanding policies of the company were for amounts less than $1000.00; that this amount represents 75% of the policyholders, all of whom had no right to vote by virtue of the provisions of Sec. 9364-1, G. C. Plaintiffs then allege that Sec. 9364-1, G. C. denies to the policyholders of defendant company "equal protection of the laws and is discriminatory in contravention of the Constitution of the United States of America and the State of Ohio" in four respects, namely; (1) In that it "grants the right to vote on a plan

of mutualization only to those policyholders insured in an amount of at least $1000.00, and whose policy at the time of the policyholders' meeting, shall have been in effect for at least one year''; (2) In that it grants to such policyholders only one vote regardless of the number of policies owned or held; (3) In that it denies the right to vote to a large number of policyholders (those not qualifying as above set forth); and (4) In that it denies the right to vote to policyholders whose policies have been in effect for less than one year.

In substantially the same respects plaintiffs allege that Sec. 9364-8, G. C., denies to the policyholders the equal protection of the laws and is discriminatory in contravention of the Constitution of the United States of America and of the State of Ohio.

Plaintiffs then pray that the Court find that Sec. 9364-1, G. C., and Sec. 9364-8, G. C., be held to be invalid and unconstitutional and particularly in those respects above set forth.

The defendant company admits practically all of the allegations of the petition except the allegations that the action is brought on behalf of the company and all policyholders, and the allegations of unconstitutionality, all of which it denies.

Before proceeding to consider the points at issue, it should be pointed out that, of the four steps required by Sec. 9364-1, G. C., et seq. for mutualization, the first three have been taken and there is no question but that they have been taken according to law. The fourth step (action by the Superintendent of Insurance) yet remains.

The first issue upon which the parties disagree is the plaintiffs' right to invoke the jurisdiction of the Court to determine the constitutionality of the mutualization statutes. On this and other issues, counsel have submitted a large number of authorities. To review them all would only unduly extend this opinion. Therefore, we shall refer only to those which we feel are decisive of the issue under consideration.

Counsel for plaintiffs urge that the declaratory judgment act (Sec. 12102-1), G. C., et seq.) is broad enough to

permit such an action in a situation where "it is perfectly obvious that situations *might* well arise in connection with the conversion * * * wherein the liquidation of the capital and surplus accounts, together with other factors, would make it *undersirable* to the point that the policyholders would be overwhelmingly, or even unanimously, opposed to the mutualization which would ipso facto make them members of the corporation and responsible for the future conduct of the business." Brief of Plaintiffs, (p. 3). At no point, however, either in the petition or in plaintiffs' briefs, do we find any definite allegation or claim that plaintiffs have been or will be injured by the proposed plan in any particular respect.

It is well settled that the holder of a non-participating policy—such as those in this case—has no vested right in the organizational structure of the company.

> "The claim that Koplin has any vested right in the organizational structure of Ohio National cannot be sustained either in logic or by authority."
>
> (Citing *Ohio, ex rel. Nat'l. Life Assn.* v. *Mathews, Supt. of Ins.*, 58 O. S. 1.)
>
> *Belden* v. *Union Central Life Ins. Co.*, 143 O. S. 329.

See also *State, ex rel.* v. *Union Central Life Ins. Co.*, 13 O. C. C. (N.S.) 49.

It also seems well settled, both on reason and authority that,

> "To invoke the judicial power to disregard a statute as unconstitutional, the party who assails it must show not only that the statute is invalid but that he has sustained, or is immediately in danger of sustaining, some direct injury as a result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."
>
> *Massachusetts* v. *Mellon* 262 U. S. 447, Syl. 5, and p. 488.

See also *Stark* v. *Wickard*, 321 U. S. 288 at p. 304.

> "This statute (Declaratory Judgment) is available only to those persons who have an 'actual controversy'.

> Persons are not entitled to litigate questions which may never affect them to their disadvantage."
>
> *Driskill* v. *Cincinnati*, 66 O. S. 372, at p. 374.

It is true that the General Assembly has directed, in Sec. 12102-12, G. C., that the declaratory judgment act shall be "liberally construed and administered," but it appears to be equally true that one may not challenge the constitutionality of a statute unless and until he has an "actual controversy" or "he has sustained or is immediately in danger of sustaining some direct injury as a result of its enforcement." Since plaintiffs have no vested right in the organizational structure of defendant company, it is quite clear that there is, then, no allegation in the petition or even a claim in the briefs that plaintiffs have sustained or even that they are in imminent danger of sustaining some direct injury. The claim or argument that some "situations *might* arise" that "would make mutualization undesirable" certainly does not give rise to a right to invoke the jurisdiction of a court for a declaratory judgment.

Under the facts as alleged, it is the opinion of the Court, that the plaintiffs are not in position, nor do they have the right, to challenge the acts complained of or the constitutionality of the statutes in question.

II

In view of the importance of the questions raised, we deem it proper for the Court to proceed to consider the claims of plaintiffs as to the unconstitutionality of Sec. 9364-1, G. C., and Sec. 9364-8, G. C., first, as to Sec. 9364-1, G. C.

This section was first enacted by the General Assembly in 117 O. L. 608, and became effective August 23, 1937. It was amended, to take its present form, in 119 O. L. 70, effective July 17, 1941. All of the policies of insurance which plaintiffs allege that they hold, were purchased by them subsequent to July 17, 1941. Therefore, when they purchased the policies they were presumed to know that the General Assembly had authorized these changes in

corporate structure of defendant company, and in the methods set forth in the statute. Sec. 2, Art. XIII of the Ohio Constitution provides, in part, as follows:

> "Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. * * *"

As stated in *Belden* v. *Union Central Life Ins. Co., supra,* at pp. 341-2:

> "This provision of the Constitution was adopted on September 3, 1912, and affords full and complete authority to the General Assembly to provide by general laws for the formation of corporations and for changes in the organizations or structure of existing corporations.
>
> "This provision was in full force and effect when each of the appellants entered into his contract with his respective company and therefore he could have no vested right in the corporate structure of the company. He knew or is presumed to have known that the General Assembly had express constitutional authority to authorize a change in the organization or structure of any corporations formed under the laws of this state."

To which we add, that when plaintiffs purchased their polices, they knew or were presumed to know that the General Assembly *had* authorized the changes here complained of and in the manner here attacked; furthermore, that plaintiffs, by virtue of the constitutional and statutory provisions then in effect, had no vested right in the corporate structure of the defendant company. Therefore, this question must be approached with those principles in mind.

It must be remembered that plaintiffs do not allege that the proposed change has or will impair, in any respect, the obligations of any of their contracts of insurance. The questions are, merely, does Sec. 9364-1, G. C., deny to plaintiffs the equal protection of the laws or is it discriminatory in any of the respects heretofore set forth?

We must also keep in mind that it was also held in the *Belden* case, *supra*, at p. 348 (referring to Sec. 9364-1, G. C., et seq.):

> "From what has been said, it follows that the act is not unconstitutional and void upon its face."

And also that, (p. 349),

> "Where, as here, an attack is made upon an act which is valid on its face, upon the ground that, as applied to a given state of facts, it is invalid, the burden rests upon the party making such attack to present clear and convincing evidence of a presently existing state of facts, which make such act unconstitutional and void when applied thereto."

Plaintiffs' claim of unconstitutionality is based upon the fact that certain of the policyholders do not have the right to vote and that those who do, have only one vote regardless of the number of policies held. It will, of course, be conceded that there is nothing in either the Constitution, or in plaintiffs' contract which grants to them any right to a voice in the proposed change. The only voice given to a policyholder is that specified in Sec. 9364-1, G. C., and to those who can qualify thereunder. It is a voice voluntarily and gratuitously given, not one which the Legislature was required to give. How, then, can the fact that some were given the right and others not, violate any provision of either the United States or Ohio Constitutions? Counsel for plaintiffs have not referred to any specific section of either Constitution, and, boiled down, their claim is that the classification set forth in Sec. 9364-1, G. C., is unreasonable and discriminatory. Again, we ask, how can such legislative classification be discriminatory or deprive plaintiffs of the equal protection of the laws, when neither by Constitution or by contract did they have any voice in such matter? We think that it cannot be.

Many cases have been cited by counsel for both sides upon the question of what is and what is not a proper

classification. The law is well summarized in 12 Am. Jur. pp. 214-216, (Sec. 521, Constitutional Law):

Page 216:

> "All reasonable doubts must be resolved in favor of a classification made by the Legislature, and it is the duty of the Court to sustain it if any real distinction can be found."
>
> "The authorities cumulatively establish the rule that the assailant of a classification must clearly establish invalidity * * *."

The only facts before the Court are those admitted allegations of the petition to the effect that a certain percentage of the policyholders are not entitled to vote. Under the rule above set forth, that fact does not per se make statute unconstitutional or invalid. Various reasons, in argument, have been adduced for the classification as enacted, such as minimizing the cost of conducting the election, the saving of time, etc., but none of these need be considered. Based upon both reason and authority, the classification is not, per se, unconstitutional and no facts have been pleaded which prove it to be unconstitutional. Furthermore, we revert to our original conclusion, since plaintiffs did not either by Constitution or by contract, have a right to a vote in such matters, the granting of the right to some, as a gratuity, but not all, does not make the act unconstitutional in its operative effect.

It should here be observed that the approval of the policyholders who can qualify, is the third of four steps necessary for the change. The first is the approval of the board of directors, which has been done. The second is the approval of the stockholders, which has also been secured. The last is the approval of the Superintendent of Insurance, which has not yet been secured. But we call attention to these four steps to emphasize the fact that great precaution has been required by the General Assembly, and that finally, for the protection of all concerned, the Superintendent of Insurance may disapprove the plan or he may approve it if he finds that "the company is in such financial condition that the conversion may be consummated without loss or harm to

its creditors, its shareholders or *its policyholders''*. (Belden case, supra, pp. 347-348.)

It is our opinion, therefore, that the classification set up in Sec. 9364-1 is not discriminatory and that it does not deny to plaintiffs the equal protection of the laws.

III

In considering the question that has been raised in connection with Sec. 9364-8, G. C., it is important to note that plaintiff, Mildred J. Chesbrough, is the holder of $1,000.00 policy of insurance purchased from the defendant company on February 1, 1944. Therefore, she is entitled to vote at a policyholders' meeting. The plaintiff, William L. Chesbrough, is the holder of a $5325.00 policy purchased from defendant company on July 16, 1946. Therefore, in only a few days he will be entitled to a vote. Therefore, for all practical purposes, there can be no dispute between the parties on this point. The first annual meeting is set for March 8, 1948, and it would hardly be possible to call a special meeting between now and July 16, 1947. As between the named parties there is no constitutional question to be decided and the question need not be decided. *State, ex rel. Clarke* v. *Cook, Auditor,* 103 O. S. 465; *Rucker* v. *State,* 119 O. S. 189, and *Wiggins* v. *Babbitt,* 130 O. S. 240. However, since plaintiffs allege that they bring this suit on behalf of all other policyholders, we add that for the reasons given under subdivision II of this opinion, it is our opinion that Sec. 9364-8, G. C., is not violative of either of the Constitutions as alleged.

It is the opinion of the Court, therefore, that the fourth amended petition be dismissed and judgment entered for the defendants.

Motion for new trial, if filed, may be overruled.

APPEARANCES:

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Hon. Hugh S. Jenkins, Attorney General, Hon. Ralph K. Klapp, Asst. Attorney General, State House Annex, Columbus 15, Ohio, *Attorneys for Defendant,* W. Lee Shield, Superintendent of Insurance of the State of Ohio.

APPENDIX "C"

Sec. 9364-1. Conversion of domestic stock life insurance corporation into a mutual life insurance corporation; plan; "policyholder" defined.

Any domestic stock life insurance corporation, duly incorporated under a general law, may become a mutual life insurance corporation, and to that end may carry out a plan for the acquisition of shares of its capital stock, provided, however, that such plan: (1) shall have been adopted by a vote of a majority of the directors of such corporation; (2) shall have been approved by a vote of stockholders representing a majority of the capital stock then outstanding at a meeting of stockholders called for the purpose; (3) shall have been approved by a majority of the policyholders voting at a meeting, called for the purpose, of policyholders each insured in at least one thousand dollars and whose insurance shall then be in force and shall have been in force for at least one year prior to such meeting; the term "policyholders" as used herein shall be deemed to mean the person insured under an individual policy of life insurance, and the person to whom any annuity or pure endowment is presently or prospectively payable by the terms of an individual annuity or pure endowment contract, except where the policy or contract declares some other person to be the owner or holder thereof, in which case such owner or policyholder shall be deemed the policyholder, and except in cases of assignment as hereinafter provided: in the case of any individual policy or contract insuring two or more persons jointly, the persons insured, or in case the policy or contract

declares two or more persons to be the owner, the persons insured or the persons so declared to be the owner shall be deemed one policyholder for the purposes hereof; in case any such policy or contract shall have been assigned by an assignment absolute on its face to an assignee other than the corporation, and such assignment shall have been filed at the principal office of the corporation at least thirty days prior to the date of said meeting, then such assignee shall be deemed a policyholder within the meaning hereof; except as provided herein, an assignee of a policy or contract shall not be deemed to be a policyholder within the meaning hereof; the reference herein to insurance in the amount of $1000 or more shall be deemed to include any annuity contract, the commuted value of which is $1000 or more on the date of said meeting, and any pure endowment contract for the principal sum of $1000 or more; notice of such meeting shall be given by mailing such notice from the home office of such corporation at least thirty days prior to such meeting in a sealed envelope postage prepaid addressed to such policyholders at their last known post office addresses, provided, that personal delivery of such written notice to any policyholder evidenced by written receipt therefor may be in lieu of mailing the same, and such meeting shall be otherwise provided for and conducted in such manner as shall be provided in such mutualization plan; provided, however, that policyholders may vote in person, by proxy or by mail; that all votes shall be cast by ballot on a uniform ballot furnished by the corporation, and the superintendent of insurance shall supervise and direct the method and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the superintendent of insurance and to the corporation the result thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the superintendent of insurance; that all necessary expenses incurred by the superintendent of insurance shall be paid by the corporation as certified to by him; and (4)

shall have been subnitted to the superintendent of insurance and shall have beei approved by him in writing; provided that every payment for the acquisition of any shares of the capital stock of such corporation, the purchase price of which is not fixed by such plan, shall be subject to the approval of the superintendent, and provided that neither such plan, nor any such payment, shall be approved by the superintendent unless at the time of such approvals, respectively, the corporation, after deducting the aggregate sum appropriated by such plan for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such plan and subject to separate approval as aforesaid after the approval of such plan, after deducting also the amount of such payment, shall be possessed of assets sufficient to maintain its deposit theretofore made with the superintendent of insurance and no less than the entire liabilities of the corporation, including the net values of its outstanding contracts computed according to the standard adopted by the corporation under the provisions of section 636 of the General Code of Ohio, and also all funds, contingent reserves and surplus save so much of the latter as shall have been appropriated or paid under such plan.

Sec. 9364-8. Code of regulations; contents; alteration, etc., of code.

(a) The code of regulations of any such corporation shall provide that each policyholder of the corporation shall be a member of the corporation. The term policyholder as used herein shall be deemed to mean the person insured under an individual policy of life insurance, the person to whom any annuity or pure endowment is presently or prospectively payable by the terms of an individual annuity or pure endowment contract, except where the policy or contract declares some other person to be the owner or holder thereof, in which case such owner or policyholder shall be deemed the policyholder, and except in cases of assignment as hereinafter provided. In the case of any individual policy or contract insuring two or more persons jointly, the persons insured, or in case the policy or contract declares two or more persons to be the owner, the persons so declared to

be the owner shall be deemed one policyholder for the purpose hereof. In case any such policy or contract shall have been assigned by an assignment absolute on its face to an assignee other than the corporation, and such assignment shall be filed at the principal office of the corporation, then such assignee shall be deemed a policyholder within the meaning hereof, but for the purpose of determining voting rights such assignment shall not be effective until thirty days after it shall have been filed with the corporation. Except as provided herein an assignee of a policy or contract shall not be deemed to be a policyholder within the meaning hereof.

Such code of regulations shall provide that each policyholder insured in at least $1000.00, or holder of an annuity, which at normal date of maturity requires the payment of $100.00 or more annually, and whose insurance or contract of annuity shall then be in force and which has been in force for at least one year prior to a policyholders' meeting, shall be entitled to one vote only irrespective of the number of policies or contracts held by him or the amount thereof.

(b) The power to make, alter, amend or repeal the code of regulations shall be vested in the board of directors or trustees unless reserved to the members by the articles of incorporation.

(c) The code of regulations of a mutual legal reserve life insurance corporation shall provide that such corporation shall issue no policy of life insurance or annuity contract which provides for the payment of any assessment by any policyholder or member in addition to the regular premium charged for such insurance or annuity.